

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

LARRY DARNELL ARTHUR,

Plaintiff,

vs.

R. TORRES, Correctional Sergeant;
F. GONZALES, Correctional Officer;
J. FLORES, Correctional Officer,

Defendants.

CASE NO. 06cv2455-BEN (CAB)

ORDER ADOPTING REPORT
AND RECOMMENDATION

Plaintiff filed a civil rights Complaint pursuant to 42 U.S.C. § 1983. Defendants moved to dismiss the Complaint on the grounds that Plaintiff failed to exhaust his administrative remedies. Defendant Flores also moved to dismiss the Complaint for failure to state a claim against him. On December 21, 2007, Magistrate Judge Ruben B. Brooks issued a Report and Recommendation recommending that Defendants' Motion to Dismiss be granted. No objections have been filed. For the reasons stated below, the Court adopts the well-reasoned Report and Recommendation of the Magistrate Judge and grants Defendants' Motion to Dismiss.

A district judge "may accept, reject, or modify the recommended decision" of a Magistrate Judge on a dispositive matter. F.R.C.P. 72(b); *see also* 28 U.S.C. §636(b)(1). Moreover, "the court shall make a *de novo* determination of those portions of the [report and recommendation] to which objection is made." *Id.* "The statute makes it clear that the district judge must review the magistrate judge's findings and recommendations *de novo if objection is made*, but not otherwise

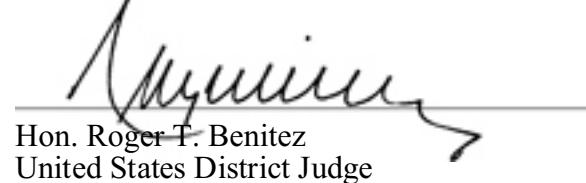
1 . . . Neither the Constitution nor the statute requires a district judge to review, de novo, findings
2 and recommendations that the parties themselves accept as correct.” *U.S. v. Reyna-Tapia*, 328
3 F.3d 1114, 1121 (9th Cir. 2003) (en banc), *cert denied*, 157 L.Ed.2d 182 (2003) (emphasis in
4 original).

5 In the Report and Recommendation, the Magistrate Judge correctly considered the
6 Plaintiff’s arguments and determined that Plaintiff failed to exhaust all available administrative
7 remedies, and that Plaintiff failed to state a claim against Defendant Flores. This Court adopts in
8 full the Report and Recommendation. Accordingly, Defendants’ Motion to Dismiss is GRANTED
9 in its entirety.

10 IT IS SO ORDERED.

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12 DATED: January 29, 2008


Hon. Roger T. Benitez
United States District Judge

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